

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

JAIME VIZCAINO	§	
	§	
v.	§	CA- NO. 1:13-cv-00229
	§	
TECHCFRETE CONTRACTING, INC.,	§	
JEFFREY GOSS AND TODD NICCUM	§	

**DEFENDANTS' FIRST AMENDED ANSWER AND ORIGINAL COUNTER
CLAIM**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COME NOW, Defendants Techcrete Contracting, Inc., Jeffrey Goss and Todd Niccum (collectively referred to herein as "Defendants") and file this First Amended Answer to Plaintiff's Complaint, Demand for Jury Trial, and Original Counterclaim:

I. DEFENSES

1. Plaintiff's claims are barred by the doctrines of estoppel and promissory estoppel.
2. Plaintiff's claims are barred by the doctrine of waiver.
3. Plaintiffs' claims are barred by the doctrines of laches and unclean hands.
4. Defendants are not liable to Plaintiff for the amount of damages claims because Defendants are entitled to a credit and/or offset for Plaintiff's actions.

II. ANSWER

5. Defendants admit only that Plaintiff has averred allegations in paragraph 1 under the Fair Labor Standards Act. Defendants deny Plaintiff's allegations of wrongdoing, and therefore Defendants deny any substantive allegations which are expressly or impliedly pled in this paragraph 1.



6. Defendants can neither admit or deny paragraph 2 due to lack of sufficient information or knowledge to justify a belief therein as to the location of Plaintiff's residence.

10. Defendants admit paragraph 6 only inasmuch that Plaintiff has averred allegations under Title 28 U.S.C. §1337 and Title 29 U.S.C. §216(b) and this Court possesses jurisdiction over the claims. Defendants deny the allegations in second sentence of paragraph 6, because TechCrete Contracting, Inc. was not an enterprise engaged in interstate commerce. Defendants deny the allegations in the third sentence of paragraph 6, because Defendants do not regularly own and operate businesses engaged in commerce or in the production of goods of commerce. Defendants deny the allegations in the fourth sentence of paragraph 6, because Plaintiff was not individually engaged in commerce. Defendants admit the fifth sentence of paragraph 6 only inasmuch as this Court possesses venue over matters arising within its jurisdiction in Travis County, Texas. Defendants further deny Plaintiff's allegations of wrongdoing, and therefore Defendants deny any substantive allegations which are expressly or impliedly pled in this paragraph.

III. ORIGINAL COUNTERCLAIM

PARTIES

17. Counter-Defendant Jaime Vizcaino is identified in Plaintiff's/Counter-Defendant's Original Complaint and has already appeared in this action.

18. On or about August 2013, Counter-Plaintiffs discovered a substantial quantity of rebar located on and about Mr. Vizcaino's residence and yard. Upon reason and belief, Mr. Vizcaino acquired such rebar from one or more of Counter-Plaintiffs without permission or compensation.

Counter-Plaintiffs had a right to immediate possession of the rebar.

Mr. Vizcaino wrongfully acquired and exercised dominion and control over Counter-Plaintiffs' personal property.

Mr. Vizcaino wrongful acts proximately caused injury to Counter-Plaintiffs, which resulted in Claimant's injury equal to the value of the rebar.

RESERVATION OF RIGHTS

To the extent permitted by law, Defendants reserve the right to supplement and amend this Answer and to assert defenses and affirmative defenses and counterclaims as future discovery may warrant and require.

PRAYER

Counter-Plaintiffs respectfully prays that this Court would grant the relief sought in this Original Counterclaim, deny all the relief sought by Plaintiff/Counter-Defendant, and grant Counter-Plaintiffs such other and further relief to which it may show itself justly entitled.

Respectfully submitted,



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**ATTORNEYS FOR DEFENDANTS
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 20, 2013, a copy of the foregoing was served upon the following counsel of record via the Court's electronic filing system:

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